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In The

Supreme Court of the United States

THE OFFICE PLANNING GROUP, INC.,
Petitioners,

v.

BARAGA-HOUGHTON-KEWEENAW CHILD DEVELOPMENT BOARD, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Michigan Supreme Court erred in concluding that the Head Start Act does not contemplate a private cause of action to obtain disclosure of bid documents and that the United States Supreme Court has abandoned the four-part test established in Cort v. Ash, 422 U.S. 66 (1975) in favor of a completely textual analysis to establish an implied cause of action.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the Supreme Court of Michigan.

The petitioner here and appellee below is The Office Planning Group, Inc.

The respondent here and appellant below is Baraga-Houghton-Keweenaw Child Development Board, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, the Petitioner states as follows:

The Petitioner, The Office Planning Group, Inc., has no parent company and is not publicly traded.

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OPINIONS BELOW

The Opinion of the Michigan Supreme Court is reported at 472 Mich 479; 697 NW2d 871 and is reprinted in the Appendix to the Petition (Pet. App.) at 1-51. The Opinion of the Michigan Court of Appeals is reported at 259 Mich App 279; 674 NW2d 686, and is reprinted at Pet. App. 52-72. The Opinion of the Trial Court is reprinted at Pet. App. 73-78.

JURISDICTION

The Michigan Supreme Court entered its judgment on June 8, 2005. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

This case involves provisions of the Head Start Act, 42 U.S.C. § 9831, *et seq.*

STATEMENT OF THE CASE

This case concerns the refusal of the Respondent, Baraga-Houghton-Keweenaw Child Development Board, Inc. ("BHK"), an Head Start agency, to provide public inspection of bids solicited by BHK for the purchase of office equipment, in defiance of 42 U.S.C. § 9839(a), which requires all Head Start agencies to provide reasonable public access to books and records of an agency involving funds for which it is responsible.

The Petitioner, a participant in BHK's bidding process, requests review of the decision of the Michigan

Supreme Court, which held that no cause of action exists for the public to enforce the disclosure requirements of § 9839(a).

It is undisputed that BHK is a Head Start agency charged with the duty to provide reasonable public access to its books and records. It is also clear that BHK is a quasi-governmental agency that subsists entirely on the basis of federal and state government tax dollars and grants.

The refusal of the Michigan Supreme Court to enable a member of the public to enforce its right to inspect books and records of an Head Start agency is an extreme deviation from long-established precedent pertaining to implied causes of action. The decision refused to apply the analysis of *Cort v. Ash*, 422 U.S. 66 (1975), and essentially declared *Cort* a dead letter.

By its refusal to hold BHK to its statutory obligation or to allow the public to enforce its corresponding right to disclosure, the Michigan Supreme Court has permitted an agency charged with the administration of millions of tax dollars to conduct its operations without the public oversight intended by Congress in § 9839(a). Given the black letter law of § 9839(a), there is no justification for the lower court's opinion.

A. Factual Background

In January 2001, BHK, an Head Start agency located in the Upper Peninsula of Michigan, solicited bids from vendors of office furniture for a proposed office renovation at BHK's headquarters in Houghton, Michigan. The Petitioner, The Office Planning Group, Inc. ("OPG"), a local vendor of office furniture, was among the vendors who submitted bids in response to BHK's request.

On the morning of January 29, 2001, BHK's Building Committee was to review the bids and select a winning bidder. Although BHK claims that all bidders were notified that this meeting of the Building Committee was open to the public, OPG was not notified of its right to attend. No other vendor was in attendance at this meeting. Further, although BHK has claimed that the bidders were advised that the bids would be opened at the Building Committee meeting, the bids were instead opened by Rodney Liimatainen, the Executive Director of BHK, in advance of the Building Committee meeting.

Following the opening of bids and selection of a winning bidder, Mr. Liimatainen contacted Jack Hamm, OPG's agent, by telephone and informed him that OPG's bid was $10,000.00 high. Mr. Hamm, incredulous at the disparity between his bid and that of the purported low bidder, orally requested the opportunity to examine the bids of the other vendors to verify that he was bidding on the same items. Mr. Hamm's request was denied by Mr. Liimatainen. Mr. Hamm thereafter made two written requests for the bid